

4-16-19

Vanessa, Pacer.gov. ^{Fed.} NY South District
(212) 805-0800
or (800) 676-6856 Cecilia

Enclosed please find USDC, SDNY
Summons + Complaint for Timothy
Daniels v. City of New York, et al.

(\$400
filing fee)

This is a Fourth Amendment case. Also
enclosed is: (1) Civil cover sheet; (2) Rule 7.1
Statement; (3) Notice, Consent, et al. to Magistrate Judge
(4) Appearance of Counsel and (5) Summons and Complaint

ⓧ My deadline for both Jahmi Harrigan
v. City of New York (also \$400, and a Fourth Amendment
case - same (1) - (5) were previously e-mailed to
you today, 4-16-19) and Timothy Daniels v. City of NY
is (M) April 22, 2019.

✱ My username is: garyfish (all together)
My password is: Bret1!ch1#

Put you - Gary, 41 West 86th St. # 1F, NY, NY 10024
(#098 = security code)
Chase visa
debit # 4207 6702 0184 6899 (10/20 = expiration)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Timothy Daniels

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gary S. Fish Esq., 30 Vesey St., 15th Fl.,
NY, NY 10007; (212) 964-560

DEFENDANTS

The City of New York, "John Doe" and "Richard Roe"

ATTORNEYS (IF KNOWN)

unknown

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)Fourth Amendment unreasonable search and seizure of plaintiff on
April 23, 2016, at 131st and 8th Avenue, NY, NYHas this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date N/A & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE?

No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- ☐ 110 INSURANCE
☐ 120 MARINE
☐ 130 MILLER ACT
☐ 140 NEGOTIABLE INSTRUMENT
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
☐ 151 MEDICARE ACT
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
☐ 160 STOCKHOLDERS SUITS
☐ 190 OTHER CONTRACT
☐ 195 CONTRACT PRODUCT LIABILITY
☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
☐ 315 AIRPLANE PRODUCT LIABILITY
☐ 320 ASSAULT, LIBEL & SLANDER
☐ 330 FEDERAL EMPLOYERS' LIABILITY
☐ 340 MARINE
☐ 345 MARINE PRODUCT LIABILITY
☐ 350 MOTOR VEHICLE
☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
☐ 360 OTHER PERSONAL INJURY
☐ 362 PERSONAL INJURY - MED MALPRACTICE

PERSONAL INJURY

- ☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
☐ 365 PERSONAL INJURY PRODUCT LIABILITY
☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
☐ 371 TRUTH IN LENDING

FORFEITURE/PENALTY

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
21 USC 881
☐ 690 OTHER

PROPERTY RIGHTS

- ☐ 820 COPYRIGHTS
☐ 830 PATENT
☐ 835 PATENT-ABBREVIATED NEW DRUG APPLICATION
☐ 840 TRADEMARK

BANKRUPTCY

- ☐ 422 APPEAL
28 USC 158
☐ 423 WITHDRAWAL
28 USC 157

OTHER STATUTES

- ☐ 375 FALSE CLAIMS
☐ 376 QUI TAM
☐ 400 STATE REAPPORTIONMENT
☐ 410 ANTITRUST
☐ 430 BANKS & BANKING
☐ 450 COMMERCE
☐ 460 DEPORTATION
☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
☐ 480 CONSUMER CREDIT
☐ 490 CABLE/SATELLITE TV
☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
☐ 890 OTHER STATUTORY ACTIONS
☐ 891 AGRICULTURAL ACTS

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 BLACK LUNG (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID TITLE XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
☐ 871 IRS-THIRD PARTY
26 USC 7609

REAL PROPERTY

- ☐ 210 LAND
☐ 220 CONDEMNATION
☐ 230 FORECLOSURE
☐ 240 RENT LEASE & EJECTMENT
☐ 240 TORTS TO LAND
☐ 245 TORT PRODUCT LIABILITY
☐ 290 ALL OTHER REAL PROPERTY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☒ 440 OTHER CIVIL RIGHTS (Non-Prisoner)

- ☐ 441 VOTING
☐ 442 EMPLOYMENT
☐ 443 HOUSING/
ACCOMMODATIONS
☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
☐ 446 AMERICANS WITH DISABILITIES - OTHER
☐ 448 EDUCATION

PRISONER CIVIL RIGHTS

- ☐ 550 CIVIL RIGHTS
☐ 555 PRISON CONDITION
☐ 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
☐ 465 OTHER IMMIGRATION ACTIONS

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? No

IF SO, STATE:

DEMAND \$ 250,000.00 OTHER reasonable attorney fees and costs JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

- ORIGIN**
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation (Transferred) ☐ 7 Appeal to District Judge from Magistrate Judge ☐ 8 Multidistrict Litigation (Direct File)
- ☐ a. all parties represented ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

- BASIS OF JURISDICTION**
- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION ☐ 4 DIVERSITY
(U.S. NOT A PARTY)

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

N/A

| | | | | | |
|--------------------------|--------------------|---|--------------------|---|--------------------|
| CITIZEN OF THIS STATE | PTF DEF [] [] | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | PTF DEF [] [] | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF DEF [] [] |
| CITIZEN OF ANOTHER STATE | [] [] | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | [] [] | FOREIGN NATION | [] [] |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

230 West 131st Street, #7E, NY, NY 10027
New York County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

The City of New York "John Doe" and "Richard Roe", all at:
530 Municipal Building
NY, NY 10007
New York County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN

DATE

April 16, 2019

SIGNATURE OF ATTORNEY OF RECORD

gary A. Jelt

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
[X] YES (DATE ADMITTED Mo. 8 Yr. 1989)
Attorney Bar Code # 65F 6551

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Clear Form

Save

Print

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Timothy Daniels

Plaintiff,

-v-

The City of New York; "John Doe"
and "Richard Roe"

Defendant.

Case No. _____

Rule 7.1 Statement

Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for

Plaintiff

(a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

None

Date:

April 16, 2019

Gary A. Fish
Signature of Attorney

Attorney Bar Code:

GSF 6551

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF NEW YORK

Timothy Daniels

Plaintiff

The City of New York, "John Doe" and
"Richard Roe"

Defendant

Civil Action No.

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Printed names of parties and attorneys

Signatures of parties or attorneys

Dates

Timothy Daniels and Gary S. Fish, Esq.

Gary A. Fish

April 16, 2019

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF NEW YORK

Timothy Daniels

Plaintiff

The City of New York v. "John Doe"
and Richard Roe
Defendant

Case No.

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

Plaintiff

Date:

April 16, 2019

Gary A. Fish

Attorney's signature

Gary S. Fish Esq. 65F 6551

Printed name and bar number

30 Vesey Street, 15th Floor

Address

garysfishesq@aol.com

E-mail address

(212) 964-5100

Telephone number

(212) 766-1131

FAX number

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF NEW YORK

Timothy Daniels

Plaintiff(s)

v.

The City of New York; "John Doe"
and "Richard Roe"

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

The City of New York; "John Doe" and "Richard Roe", all at:
530 Municipal Building
NY, NY 10007

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

April 16, 2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Gary S. Fish, Esq. (GSF 6551)
Attorney for the Plaintiff
30 Vesey Street, 15th Floor
New York, New York 10007
(212) 964-5100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X CASE NO.:
TIMOTHY DANIELS,

PLAINTIFF,

PLAINTIFF'S COMPLAINT

-against-

THE CITY OF NEW YORK; "JOHN DOE"
AND "RICHARD ROE",

(Plaintiff Demands a Trial by

(Jury of all issues herein)

DEFENDANT..

-----X

The plaintiff, by and through his attorney Gary S. Fish, Esq., sets forth the following
as his Complaint against defendant herein.

I. PARTIES AND JURISDICTION

1. On or about April 23, 2016, and at all times relevant herein, the plaintiff, a US citizen,
resided and resides at 230 West 131st Street, #7E, NY, NY 10027.

2. On or about April 23, 2016, and at all times relevant herein, on information and
belief, defendant The City of New York was and is a municipal corporation lawfully
organized and existing under the laws of the State of New York, and on said date and all
times relevant herein, said defendant had and has a principal place of business located at 530
Municipal Building, NY, NY 10007, as did defendants "John Doe" and "Richard Roe" whose
identities are presently unascertained and whose acts of wrongdoing herein after alleged herein,

were committed within the scope of their respective agency and/or authority and/or employment on behalf of defendant The City of New York, as defendant police officers.

3. Pursuant to 28 U.S.C. Section 1343(a) (3), the Federal Court herein has original jurisdiction to redress the deprivation of civil rights under color of any law, statute, ordinance of any right, privilege, or immunity secured by the U.S. Constitution, providing for equal rights of citizens or of all persons within U.S. jurisdiction, and jurisdiction exists under the alleged Fourth Amendment proscribing unreasonable searches and/or seizures herein.

4. Pursuant to 28 U.S.C. Section 1391(b) in a case where jurisdiction is not solely founded on diversity jurisdiction, such as the present case, venue is proper where the defendant resides or a judicial district where a substantial part of the events giving rise to the claim occurred, and venue is proper therefor in the United States District Court, Southern District of New York.

COUNT I
(VIOLATION OF FOURTH AMENDMENT OF US CONSTITUTION)

5. On or about April 23, 2016, while the plaintiff was lawfully traversing in and around 131st and 8th Avenue, NY, NY, and was drinking a non-alcoholic beverage, to wit, Sprite out of a cup with ice, defendant police officers without identifying themselves, asked plaintiff to stop, and plaintiff, was arrested for possessing an open container of alcohol.

6. The arrest of plaintiff constituted an unreasonable search and seizure in violation of the Fourth Amendment, as defendants did not have even reasonably articulable suspicion to so Arrest plaintiff.

7. As a direct result of plaintiff's Fourth Amendment violation, he was caused to sustain loss of liberty of approximately one (1) year, and sustained anxiety, stress and humiliation.

8. The criminal case brought against plaintiff in Manhattan Criminal Court, Docket #2016NY026080, County of New York, 100 Centre Street, NY, NY 10013, was dismissed on or about April 2017.

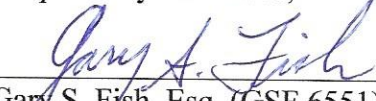
WHEREFORE, plaintiff prays for relief as follows:

AS AND FOR THE FIRST COUNT:

1. For general damages in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00);
2. For reasonable attorney fee and costs;
3. For disbursements; and
4. For any other just relief deemed proper by the Court.

DATED: NEW YORK, NEW YORK
APRIL 17, 2019

Respectfully submitted,



Gary S. Fish, Esq. (GSF 6551)
Attorney for the Plaintiff
30 Vesey Street, 15th Floor
NY, NY 10007; (212) 964-5100